IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1267 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARANSING F VASAVA

Versus

GULABSING F VASAVA

Appearance:
1. First Appeal No. 1267 of 1981
MR DF AMIN for appellants
MR BHARAT J SHELAT for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellants - original plaintiffs have filed this appeal under Sec.96 of the Code of Civil Procedure wherein they have challenged the judgment and order dated 1.10.1980 passed by the learned 2nd Civil Judge (SD), Surat in Special Civil Suit No.143 of 1976.

2. The plaintiffs filed the Suit claiming a relief for declaration that in the suit property as well as the amount received by the respondent - original defendant wherein the plaintiff has 1/4th share and also for accounts. It was prayed in the suit to declare that the property situated in Nizar village is the joint family property wherein each of the plaintiff has 1/4th share for partition of the same.

3. The facts stated in the plaint can be briefly stated as under:

The father of the plaintiffs, namely, Fatesing Gumansing had three wives: (1) Zohrabai, (2) Shahabai and (3) Manguben. Plaintiff no.1 and the defendant are sons of Zohrabai and plaintiffs nos.2 and 3 are sons of Shababai. The third wife, Manguben did not give birth. The parties are, therefore, brothers and the defendant is the eldest brother. It is alleged by the plaintiffs that from the time of their forefathers, on the death of the father, there is a custom of the eldest son becoming the chief tain and he has to manage the entire estate, viz. Mehwassi estate and further to the vahivat of the same and from the income received by him, he has to maintain his other family members. Deceased Fatesing died on 17.11.1929 leaving behind him his eldest son, the defendant Gulabsing Vasava, who in turn, became the chief tain of the Mehwassi estate. This Mehwassi estate has 30 villages, out of which, 22 villages are in Bharuch District and the remaining eight villages are in Surat District. It is the case of the plaintiffs that when deceased Fatesing died, the defendant was minor and therefore, the vahivat of the estate was handed over to the Court of wards and as soon as the defendant became major, the vahivat of the estate was handed over to him. It is the case of the plaintiff that Gujarat State Government by passing a Sagbara and Mehwassi Estates Regulation, 1962 (Gujarat Regulation No.1 of 1962), (hereinafter referred to as 'the Regulations') abolished the present estate and as per the provisions of the said Act, compensation was to be fixed. Under the said Act, the legal proceedings started before the Collector and accordingly, the defendant was awarded compensation worth Rs.18,42,988.72 ps. (which has been enhanced to

Rs.28,00,000/- in the appeal) with running interest at the rate of 4% from 1.12.1962. It is alleged that the defendant has deposited this amount in his name of any bank and in his amount, each of the plaintiff has 1/4th share. The plaintiffs' case is that the defendant has also received Rs.2,41,624.18 ps. as compensation for taking away Houses Nos.255 to 257 and some other lands. The plaintiffs' further case is that the defendant has also erected new building with the help of old building materials in Nizar wherein also they have got 1/4th share and when the defendant was asked to give the 1/4th share as well as accounts, the defendant did not give the same and therefore, the suit notice was given to the defendant on 4.5.1976. However, the defendant gave an evasive reply by stating that in the compensation which he received, the plaintiffs have no share and therefore the present suit was filed.

4. The defendant in his written statement at Exh.19 denied various averments made by the plaintiffs. It is denied that the plaintiffs and the defendant are the members of the Joint Hindu Family and he is a Karta of the family. It is pointed out by him that by rule of primogeniture, the eldest son becomes the absolute owner of the entire estate and this is a custom in force since time immemorial. It is also denied that he being the eldest son of the family, was appointed as chief tain only to do the vahivat of the estate. According to him, he has stated that the plaintiffs have no right over the estate of Mehwassi, however, with a view to oblige them, they were given the maintenance. He has specificaly denied that the plaintiffs are the co-sharers and has also denied that the plaintiffs have share in the compensation amount awarded to him.

5. From the pleadings, the trial Court framed the Issues at Exh.21. After considering the oral as well as documentary evidence on record, the trial Court held that the defendant has proved that in the capacity of the Chief tain he has become the sole owner of the Mehwassi estate and all the properties left by his father. The trial Court, however also held that the plaintiffs have failed to prove that each of them has got 1/4th share in the estate and properties, as claimed by them. Accordingly the suit was dismissed. Hence, the present appeal.

6. Learned Counsel Mr.Amin appearing for the appellants after taking us through the relevant provisions of the regulations submitted that the appellants are the co-sharers and therefore, they are

entitled to have the share in the compensation upon abolition of tenure of Sagbara estate.

7. To appreciate the aforesaid contention, it is necessary to consider the relevant provisions of the regulations. The said regulations were framed in exercise of powers conferred by sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution of India by the Government of Gujarat with the assent of the President. It was framed with a purpose to provide for the conferment of occupancy rights on inferior holders and tenants of holders of Sagbara and Mehwassi estate in the Broach and Surat Districts and for the abolition of certain proprietary rights of such holders in those estate and for matters connected therewith.

Section 2(10) of the regulations defines "Mehwassi estate" which means the villages specified in Schedule II and a "Mehwassi" means a holder of the said estate and "Mehwassi land" means and comprised in the territory of the said estate. Section 2(15) defines "Sagbara estate" which means villages specified in Schedule I and "Sagbara land" means all land comprised in a village specified in Part I of that Schedule. Section 2(18) defines "Vasava" which means the holder of the Sagbara estate and includes co-sharers, if any.

Even though the parties have described themselves as "Vasava" as if it is their surname, the application for compensation was not filed before the Collector by the defendant describing himself as "Vasava", but the same was filed as "Mehwassi" as defined under Section 2(10). It may be stated that Mehwassi as defined under Section 2(10) means a holder of Mehwassi estate does not include co-sharer, while "Vasava" means a holder of Sagbara estate does include co-sharer, if any. Admittedly, the defendant has filed application dated 7.1.1970 being Compensation Case No.15 of 1969 for compensation under Sec.11 of the Regulations before the Collector in the capacity as Mehwassi. The said application was not only entertained by the competent authority but the compensation in sum of Rs.18,21,161.62 ps. was also awarded. In that view of the matter, since Mehwassi does not include co-sharer, the plaintiffs who claim their share as co-sharer from the amount of compensation are not entitled for the same. We, therefore, see no merits in the submission of learned Counsel Mr.Amin for the appellants.

Learned Counsel Mr.Amin for the appellants, however, submitted that even though Mehwassi estate was

impartible, after the abolition of the tenure of Sagbara estate/Mehwassi estate, the plaintiffs are independently entitled to claim share from the amount of compensation received by the present respondent.

8. From the evidence on record, it is clear that in the year 1950, the plaintiffs were given agricultural lands as well as a land for residential purpose. Further, from the evidence of Javansing Fatehsing at Exh.38, he has admitted that since time immemorial the practice of appointment of the Chief Tain was in force till it was abolished in the year 1962. It is admitted that the eldest member was appointed as a Chief Tain and his duty was to maintain the other family members. This would go to show that as per their prevailing rule of Primogeniture, the defendant was the absolute owner of the property. Since the plaintiffs were also given lands as well as residential house, it is not disputed by them and they have also received substantial amount of compensation from the Government as their lands were acquired for Ukai Project. We do not think that the plaintiffs would now be entitled to claim any amount from the defendant. In this view of the matter, we hardly see any merit in this appeal. Suffice it to say that we are in total agreement with the reasoning recorded by the learned trial Judge and the ultimate conclusion arrived at by him. There being no substance in this appeal, the same is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

(Kshitij R. Vyas, J.)

(Kamal M. Mehta, J.)
Sreeram.